

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 1001003494
v.	:	
	:	
LEONARD E. MILLER, III,	:	
	:	
Defendant.	:	

ORDER

Upon consideration of Defendant Leonard Miller's ("Miller") Motion In Limine, it appears to the Court that:

1. On March 1, 2010, Miller was indicted on Rape in the Second Degree. The State of Delaware (the "State") alleges that, on or about January 1, 2010, Miller intentionally engaged in non-consensual sexual intercourse with the complaining witness.
2. Miller did not file a written Motion, and the State has not filed a written Response. As a result, the Court's knowledge of the facts and circumstances of this case stems from the parties' oral representations to the Court.
3. The parties have indicated that, shortly after the alleged rape, Miller was assaulted by a number of individuals. Miller sustained serious physical injury as a result of the assault. Miller asserts that the complaining witness was involved in the assault. The State, however, disagrees.
4. Miller seeks an Order from this Court allowing him to introduce evidence of the assault, including specific details and accounts of the event, to establish that the complaining witness had a motive to lie regarding the alleged rape. Miller maintains that this evidence is admissible under Delaware Rule of Evidence ("D.R.E.") 404(b).

5. The State contends that the details of the assault are irrelevant under D.R.E. 401. The State further maintains that the evidence in question, if relevant, is inadmissible pursuant to D.R.E. 403.

6. As an initial matter, the Court notes that D.R.E. 402 provides that relevant evidence is generally admissible, and that irrelevant evidence is inadmissible.¹ Relevant evidence is that which has a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.² Relevant evidence, however, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.³

7. When determining the admissibility of evidence under D.R.E. 404(b), the Court should consider the *Getz* requirements; namely that the evidence must be: (1) “material to an issue or ultimate fact in dispute”; (2) admissible under D.R.E. 404(b)⁴; (3) plain, clear, and conclusive; (4) not too remote from the crime charged; (5) not unfairly prejudicial pursuant to D.R.E. 403; and (6) accompanied by a limiting

¹ D.R.E. 402.

² D.R.E. 401.

³ D.R.E. 403.

⁴ D.R.E. 404(b) provides, in pertinent part, that “[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.”

instruction.⁵

8. The Court has considered the evidence requested by Miller, D.R.E. 404(b), and the *Getz* factors. Based on this analysis, the Court concludes that there is some relevance. In a recent Delaware Supreme Court case, *Archy v. State*, the Court examined, in part, the question of whether the Superior Court abused its discretion when it refused to permit a defendant to refer to ammunition and drugs located in a witness's house to establish the witness's motive to lie.⁶ In *Archy*, the defendant sought to introduce the evidence in question:

to contradict [the witness's] testimony that he did not have a gun and to suggest to the jury that [the witness] was a suspect. [The defendant] sought to use the presence of drugs to establish that [the witness] and [the victim] were competing drug dealers, which, in turn, established [the witness's] motive to kill [the victim].⁷

9. The *Archy* Court first noted that, "there is wide discretion given to counsel during cross-examination as he tests, among other things, the credibility of a witness" ⁸ The Court further noted that:

[e]ffective cross-examination is essential to a defendant's right to a fair trial. It is the principal means by which the believability of a witness and the truth of [his] testimony are tested. In Delaware, the jury is the

⁵ See *Getz v. State*, 538 A.2d 726 (Del. 1988).

⁶ 2009 WL 1913582, at *4 (Del. Supr.).

⁷ *Id.*

⁸ *Id.* (citing *Martin v. State*, 346 A.2d 158, 160 (Del. 1975)).

sole trier of fact, responsible for determining witness credibility and resolving conflicts in testimony . . . [j]urors should be afforded every opportunity to hear impeachment evidence that may undermine a witness' credibility.⁹

The *Archy* Court ultimately concluded that the evidence was properly excluded under D.R.E. 403.¹⁰

10. While this Court recognizes that jurors should be afforded an opportunity to hear evidence that may undermine a witness's credibility, the Court cannot ignore D.R.E. 403. In fact, built into the *Getz* analysis, as noted above, is a consideration of D.R.E. 403.

11. Miller contends that the existence of the assault created a motive for the complaining witness to lie to police about the alleged rape. Miller, therefore, asserts that the assault is admissible evidence. The Court agrees. The Court does not, however, agree that, as a result, all evidence pertaining to the assault is admissible.

12. As noted above, pursuant to D.R.E. 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.¹¹ The Court agrees with the State that introducing the details of the assault, including the injuries sustained by Miller as a result, would create confusion among the jury over which case they are here to

⁹ *Id.* (citing *Atkinson v. State*, 778 A.2d 1058, 1061-62 (Del. 2001)).

¹⁰ *Id.* at *5.

¹¹ D.R.E. 403.

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decide. The Court concludes that the details surrounding the assault add little probative value sufficient to outweigh the danger of unfair prejudice or confusion of the issues.

13. For the foregoing reasons, considering the evidence in light of D.R.E. 404(b) and the *Getz* factors, the Court concludes that Miller may introduce evidence that the assault occurred. Miller may not, however, introduce evidence regarding the specific details of the assault and/or the details, including severity, of the injuries sustained by Miller as a result. The parties are instructed to redact the DVD of Miller's interview with police in accordance with this Order.

IT IS SO ORDERED.

/s/ William L. Witham Jr.
Honorable William L. Witham, Jr.

WLW/dmh

oc: Prothonotary

xc: Deborah Weaver, Esquire
Alexander Funk, Esquire